

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated January 29, 2008 (hereinafter Office Action) have been considered, and reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully maintains the traversal of each of the prior art rejections (§§ 102(e) and 103(a)) based at least in part on the teachings of U.S. Patent No. 6,658,231 to Nakatsuyama (hereinafter “Nakatsuyama”) because Nakatsuyama does not teach or suggest each of the purported claim limitations. For example, Nakatsuyama does not teach the limitations directed to a content item, as claimed in each of the independent claims. As pointed out previously, the asserted index data cannot correspond to the claimed content item because Nakatsuyama’s index data is not presented to a user during presentation of the asserted program data signal. Notably, none of the cited sections of Nakatsuyama teach that the index data is presented to a user. Rather, at column 7, lines 63-65 Nakatsuyama teaches that the “[i]ndex data signal 34 contains the channel and time information personal receiver 40 uses to receive the user’s preselected program(s) from program signal 36.” Since the receiver 40 uses the index data, not the user, there is no teaching or suggestion that the index data is presented to the user. Also, the cited portion at column 7, lines 10-18 discloses the general structure of the receiver 40 and how program data is presented, not index data. Further, the cited portion at column 6, lines 11-25 merely discusses the transmission of the index data and makes no mention of “program time, program tuning information, and/or program video sample” as asserted at page two of the Office Action.

While index data is received, the only received signal that is presented is the requested program (column 2, lines 52-64). Rather, the index data merely contains information that the receiver 40 requires to correctly tune, receive, download, and output selected programs (column 5, lines 59-62). None of the cited teachings of Nakatsuyama discuss a portion of the index data signal that is attached by a broadcasting system and presented during the presentation of the broadcasted broadcast media stream to which it was attached. Therefore, the asserted index data fails to correspond to the claimed content item.

Without a presentation of correspondence to each of the claimed limitations, the prior art rejections are improper.

However, without acquiescing to characterizations of the asserted art, Applicant's claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant's claimed subject matter, and in an effort to facilitate prosecution, Applicant has amended each of the independent claims to indicate that the content item comprises at least one of text, audio, video, and multimedia presentation and is sent to a user terminal on a channel parallel to the channel used for broadcasting the broadcast media stream. Support for these changes may be found in the Specification, for example, at page 5, lines 11-17 (paragraph [0024]) and at page 5, line 24 through page 6, line 11 (paragraph [0026]); therefore, the changes do not introduce new matter. Each of the pending claims is further believed to be patentable over the asserted references for the additional reasons set forth below.

In addition to the above reasons, Nakatsuyama's index data would not correspond to the now-claimed content item since the index data does not comprise any one of text, audio, video, or multimedia presentation. The index data is purely data that assists a receiver to download the correct program data appropriately (column 2, lines 29-30 and 43-51). The assertions that "index data is presented to user at a given moment in time" and that "[i]t is impossible for a user to know what program is broadcasted at what time without actually checking out the receiving index data" are incorrect. The index data is used by the receiver, not the user, to tune to and download program data (column 2, lines 25-29, lines 43-51, and lines 60-64). In contrast to these assertions, Nakatsuyama assumes that the user knows beforehand the programs he/she wishes to receive such that the user "preselects one or more programs the service provider broadcasts over the system" (column 4, lines 7-8). Accordingly, the index data is not accessed by, or presented to, the user. Instead, the broadcast system transmits the index data on the basis of the preselection of the user, and the user's receiver monitors and accesses the relevant index data to download the preselected program data.

Moreover, Nakatsuyama's program data would not correspond to the now-claimed content item because the content item is sent on a channel parallel to the channel used for broadcasting the broadcast media stream. In contrast, the program data of Nakatsuyama is data of the broadcast media stream transmitted on the same channel as the broadcast media stream. Without correspondence to each of the claimed limitations, the prior art rejections would be improper.

With particular respect to the § 102(e) rejection, Applicant notes that in order to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the patent claim; *i.e.* every element of the claimed invention must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102. Applicant respectfully submits that Nakatsuyama does not teach every element of independent Claims 1, 11 and 21 in the requisite detail, and therefore fails to anticipate Claims 1-4, 6, 8-14, 16, 18-24 and 26.

Further, the asserted correspondence of Nakatsuyama's index data is improper. As set forth in the Specification, the claimed content item is related to the content of a broadcast media stream and provides a supplementary service (*e.g.*, program information, reports, competitions) delivered in addition to a traditional media stream and presented to a user during the broadcast of the traditional broadcast media stream (paragraphs [0024] and [0027]). In contrast, Nakatsuyama's index data merely enables a receiver to receive and output selected programming and is unrelated to the content of any associated programming. *See, e.g.*, column 5, lines 59-62 and column 7, lines 63-65. MPEP § 904.01 requires that the claims be interpreted consistent with the specification; however, the asserted index data of Nakatsuyama is not consistent with the discussions of the claimed

content item set forth in the Specification. Thus, the asserted correspondence is further improper. Applicant accordingly requests that each of the prior art rejections be withdrawn.

Dependent Claims 2-4, 6, 8-10, 12-14, 16, 18-20, 22-24 and 26 depend from independent Claims 1, 11 and 21, respectively, and also stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Nakatsuyama. While Applicant does not acquiesce with the particular rejections to these dependent claims, the rejections are also improper for the reasons discussed above in connection with independent Claims 1, 11 and 21. These dependent claims include all of the limitations of independent Claims 1, 11 and 21 and recite additional features which further distinguish them from the cited reference. Therefore, the rejection of dependent Claims 2-4, 6, 8-10, 12-14, 16, 18-20, 22-24 and 26 is improper. Applicant accordingly requests that the § 102(e) rejection be withdrawn.

With respect to the § 103(a) rejections of dependent Claims 5, 7, 15, 17 and 25 based upon Nakatsuyama in view of U.S. Patent No. 6,975,835 to Lake *et al.* and U.S. Publication No. 2002/0105976 by Kelly *et al.*, respectively, Applicant respectfully traverses. As discussed above, Nakatsuyama fails to correspond to the limitations of independent Claims 1, 11 and 21. The further reliance on Lake *et al.* and Kelly *et al.* does not overcome the above-discussed deficiencies in Nakatsuyama as neither Lake *et al.* nor Kelly *et al.* have been shown to teach or suggest use of a content item as claimed. It is further noted that RDS data cannot correspond to the claimed content item because the RDS data of Lake *et al.* is not attached to the broadcasting time line of a broadcast media stream. Although Lake *et al.* discloses time synchronization, the only example is of automatic synchronization of clocks. A skilled artisan would recognize this to relate to synchronization of the (12/24H) clock included in the radio receiver with official time and not for attaching a content item to a broadcasting time line of a broadcast media stream. Thus, the asserted combinations of the teachings of Nakatsuyama with Lake *et al.* and Kelly *et al.*, respectively, do not teach each of the limitations of dependent Claims 5, 7, 15, 17 and 25, and the rejections should be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art,

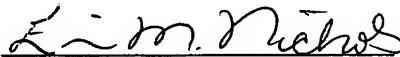
inherent, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.152US) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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